

**BEFORE THE INDIANA
BOARD OF SPECIAL EDUCATION APPEALS**

In the Matter of L.S., and the)	
Nineveh-Hensley-Jackson United Sch. Corp.,)	
Johnson County Special Programs)	Article 7 Hearing No. 1000-97
)	
Administrative Appeal Under)	
511 IAC 7-15-6)	

Procedural History

L.S. (hereinafter, “the Student”), by counsel, on November 25, 1997, requested a due process hearing under 511 IAC 7-15-5 against the Nineveh-Hensley-Jackson United School Corporation and the Johnson County Special Programs (collectively referred to hereinafter as “the School”), seeking reimbursement for private school tuition.¹ On the same date, Joseph R. McKinney, J.D., Ed.D., was appointed as the Independent Hearing Officer (IHO).

The IHO, on December 9, 1997, established a telephone prehearing conference for December 12, 1997, as provided by I.C. 4-21.5-3-19 of the Administrative Orders and Procedures Act (AOPA), to address issues for the hearing and to establish procedures for the hearing. The prehearing conference occurred as scheduled. As required by I.C. 4-21.5-3-19 of AOPA, the IHO, on December 18, 1997, issued a prehearing order, which set hearing dates for January 7, 8, and 9,

¹The Individuals with Disabilities Education Act (IDEA), as reauthorized, requires under 20 U.S.C. §1415(b)(7) that requests for hearings from parents or their attorneys provide, *inter alia*, (a) the name of the Student, the Student’s address, and the name of the school the Student attends; (b) a description of the nature of the dispute; and (c) a proposed resolution, where possible. There is no dispute regarding the sufficiency of the Student’s hearing request in these respects.

1998, and established as well as a site for the hearing.

The issues for the hearing were stated as follows:

1. Whether the Student was denied a free appropriate public education (FAPE) by the School's alleged pattern of misconduct with respect to the development and implementation of a proper Individualized Education Program (IEP); and
2. Whether the parents are entitled to reimbursement for expenses incurred in their unilateral placement of their child in a private school, including but not limited to tuition reimbursement and transportation costs.

All parties were advised of their hearing rights by a "Hearing Notice" also issued by the IHO on December 18, 1997. No motions for extension of time were requested by either party. The parties did agree, however, that the IHO's written decision would be rendered on or before February 20, 1998.²

During the prehearing conference prior to the first day of hearing on January 7, 1998, the School objected for the record that the Student did not comply with 511 IAC 7-15-5(j)(3) by failing to disclose documentary evidence at least five (5) business days prior to the hearing. The Student had disclosed timely a list of exhibits but not the exhibits themselves. The School did not receive the actual exhibits until two (2) business days prior to the hearing. The School did not assert it was prejudiced to any significant degree by this procedural lapse and declined the IHO's offer to continue the hearing. The School indicated it was prepared to go forward with the hearing as scheduled. (Transcript, pp. 10-12.)

All exhibits tendered by both parties were received into the record, except that the Student's Exhibit No. 11 was qualified in that it was not specific to the Student but constituted information of a general nature and general application. The Student's Exhibit No. 11 comprises a number of articles and information regarding dyslexia, some from *Reader's Digest*, others from the private school where the Student was enrolled.

The hearing was conducted over three days: January 7, 8, and 9, 1998. The IHO rendered his written decision on February 19, 1998.³ The IHO determined fifty-one (51) Findings of Fact,

²The transcript at p.944 indicates the parties stipulated to February 6, 1998, and not February 20, 1998. Apparently, a subsequent conversation occurred among the two parties and the IHO. However, the record does not contain any documentation in this respect beyond the reference in the IHO's written decision. Neither party has raised an issue in this respect.

³There is some confusion in this respect. Although the cover sheet for the IHO's written decision indicates the "Date of the Hearing Decision" is February 19, 1998, he signed and dated the decision apparently on February 20, 1998. Neither party raises any issue in this respect, and

from which he derived five (5) Conclusions of Law. Two (2) orders were based upon the Conclusions of Law. The IHO properly notified the parties of their respective appeal rights.

The IHO's Findings of Fact

The Student is now thirteen (13) years old (d/o/b February 11, 1985). She initially attended public school in kindergarten. In 1993, she was referred for an educational evaluation during the third grade after her teacher observed the Student experiencing problems with handwriting, spelling, mathematics, reading, fine motor skills, verbal expression, and passive or withdrawn behavior. The results of the educational evaluation indicated a significant discrepancy between verbal and performance abilities as well as between verbal ability and written expression. Significant weaknesses were also noted in her ability to reproduce a model. Her distractibility was also noted as a weakness. However, the Student did show significant strengths in verbal expression and the ability to distinguish essential details from nonessential ones. Based upon the foregoing, the Student's Case Conference Committee determined her eligible for special education services as a student with a learning disability, specifically with dyslexia and dysgraphia. The parent provided written permission for placement on March 29, 1994. The School began providing services on April 4, 1994.

An occupational therapy (OT) evaluation was conducted during April of 1994. The Student received OT services until May of 1996.

Disputes began to emerge from the outset. Primary issues raised by the parents in a letter written in November of 1993 were concerned with confidentiality and communication. These issues were raised again in the Case Conference Committee (CCC) meeting conducted in March of 1994. In this latter CCC meeting, the parents shared with the School the results of an independent evaluation conducted on January 31, 1994. The parents were "in constant and direct contact" with the Student's third grade teacher regarding her progress (FoF # 14). The Student's educational setting in the third, fourth, and fifth grades remained primarily in a general education classroom. The student's special education teacher worked with the Student and her respective general education teachers. There was "significant contact" between the special education teacher and the Student's parents during this period, although the parents continued to express some frustration over communication with the School and with implementation of the Student's IEP.

The Student's mother suggested to the School a number of modifications and accommodations during the Student's third, fourth, and fifth grade years, many of which were incorporated into the Student's IEP. The Student's mother also provided the Student's fourth and fifth grade teachers with information regarding dyslexia. The Student's mother established a positive relationship with the fifth grade general education teacher. The Student had a successful fifth grade experience.

However, as early as December of 1994, the mother expressed dissatisfaction with the public

timeliness is not an issue for any party in this administrative review.

school setting and indicated she was considering placing the student in another school. On May 7 and 16, 1996, the Student's CCC convened to develop an IEP for the Student as she moved from an intermediate school fifth grade setting to a middle school sixth grade class. These meetings were described by the IHO as "intense and generally...unpleasant." (FoF #24.) The Student's mother prepared a questionnaire for the Student's sixth grade teachers to assess their understanding of dyslexia, their attitudes toward classroom adaptations, and their general teaching approach. School officials would not allow the teachers to answer the questionnaire. Some of the sixth grade teachers found the CCC meetings intimidating. Although the IHO determined (FoF #25) the CCC meetings "did nothing to create positive communication between the parent and [the] sixth grade teachers," the Student's fifth grade teacher did discuss with the sixth grade teachers successful strategies he had employed.

The middle school principal established himself as the conduit for communication between the parents and the sixth grade teachers, particularly the social studies, reading, and language arts teachers. This resulted in "very little direct communication" between the teachers and the parents. The IHO found that the limitations on direct communication resulted in failures to implement the Student's IEP. Generally, the following were found to have occurred: failure to provide a progress report; too much homework assigned to the Student; the Student was not provided enough time to complete work at school; failure to provide the Student with teacher or peer notes; and failure to monitor the Student to ensure she maintained a daily assignment log. The IHO also determined that the sixth grade teachers did not understand the nature of the Student's learning disability, believing her difficulties were in the area of "written expression" without regard to dyslexia and dysgraphia (FoF #35).

The middle school special education teacher of record (TOR), who is currently the middle school guidance counselor, "showed a remarkable lack of sensitivity to the parent's concerns over the progress of the Student and did not have a healthy attitude toward the mother..." (FoF #37).⁴

There were several conversations between the Student's mother and the principal in September of 1996, regarding anxiety and stomach problems the Student was experiencing by being overwhelmed by homework. The mother reported to the principal on September 12, 1996, that the Student was "wearing out" from the pressure at school.⁵ The Student's mother informed the principal of the same complaints in January, February, March, April, and May of 1997. The Student experienced a "shut down" at school in April and May of 1997. The principal "froze" the Student's grades as of May 7, 1997. During a subsequent CCC meeting, the Student's mother

⁴The IHO specifically mentioned a note appearing at the bottom left-hand of the TOR's notes, which referred apparently to the mother as a "Psycho—handle Mom with Kid Gloves. Call Mom a lot." Inexplicably, this document was submitted by the School as a part of its exhibits (p. 721 of the School's Exhibit 8). Please see also Footnote 7, *infra*.

⁵The IHO referred to these discussions occurring in September of 1997. The Board of Special Education Appeals (BSEA) has changed the dates to correspond with the record.

expressed her belief the School's teachers never understood the nature of the Student's disability and did not implement her IEP.

The IHO accepted as reliable and informed the testimony of the Student's primary witness, the headmaster at the private, independent school she began attending in August of 1997. The witness stated the Student's IEP should have had a social-behavioral component, especially as this would relate to self-esteem or other behavioral problems manifested by the Student, such as "shutting down." He also stated every classroom teacher should have been in direct communication with the parents regarding the Student's performance.

The Student began attending the private, independent school in August of 1997. The private school is located in Bloomington, Indiana, and deals primarily with students who have dyslexia and other similar learning difficulties. The private school has been in operation for twenty (20) years. The Student is progressing academically and socially at the private school. Without any further fact-finding in this respect, the IHO determined that the private school is providing the Student with an appropriate education (FoF #48). The private school tuition for the 1997-1998 school year was \$4,200. The parents also incurred costs for transporting the Student to and from the private school.

Triennial evaluation results indicate the Student has verbal ability in the high average range and nonverbal (or performance) ability within the average range. Written expressive skills continue to be a significant weakness.

The IHO also found that "[t]he school did not give the parents notice that they had to inform the school of their intent to enroll the student in a private school" (FoF #51).⁶

⁶The IHO's Finding of Fact No. 51 is referring to 20 U.S.C. §1412(a)(10)(C)(i)-(iv), which generally excuses financial responsibility for a public agency where it has made available a FAPE for an eligible student, but the parents elected to place the student in a private school or facility. For an IHO or court to order reimbursement, there would have to be a finding that the public agency did not timely make available a FAPE to an eligible student prior to the private school enrollment. Reimbursement can be affected by the conduct of either the parents or the school. Reimbursement could be reduced or denied, in this situation, if the parents, at the most recent CCC meeting prior to enrollment in the private school, did not inform the school they were rejecting the proposed public school placement and intending to enroll the student in a private school or facility at public expense; or the parents failed to provide this notice in writing ten (10) business days prior to the removal of the student from the public school. However, reimbursement could not be denied or reduced, under these facts, if the parents had not been informed by the public school that such notice had to be given. The IHO determined the School did not give the Student's parents the requisite notice of the parents' responsibility to provide the School notice regarding the Student's enrollment in a private school at public expense.

The IHO's Conclusions of Law

The IHO, based upon the aforementioned fifty-one (51) Findings of Fact, concluded that the School denied the Student a FAPE by failing to implement the Student's IEP during her sixth grade year (school year 1996-1997); by failing to evaluate the Student's emotional needs despite repeated warnings from the Student's mother, eventually resulting in the Student's "shutting down"; by restricting interaction and communication between the parents and the teachers; and by failure to provide any training for the general education teachers regarding the Student's disabling condition.

The IHO also concluded that the proposed IEP for the 1997-1998 school year was inappropriate for the Student because it did not address her emotional-behavioral needs; did not provide for interaction and communication between the Student's teachers and the parents in order to monitor and assess the Student's emotional needs, her homework, and her organizational skills; and by utilizing "unambitious" goals in the Student's IEP that are inadequate and inappropriate considering the Student's sixth grade academic performance and her test scores.

The private school, the IHO concluded, is providing the Student with an appropriate education that addresses the student's need for specialized instruction along with attention for her emotional needs and interaction with the Student's parents.

The IHO's Orders

In consideration of the above, the IHO ordered the School to reimburse the parents the \$4,200 in tuition costs, and to reimburse the parents for the costs associated with transportation of the Student to the private facility.

As noted above, the IHO provided the parties with an adequate notice of their administrative appeal rights under 511 IAC 7-15-6.

Appeal to the Indiana Board of Special Education Appeals

The School timely filed on March 16, 1998, a request for an extension of time in order to prepare and file its Petition for Review. The Indiana Board of Special Education Appeals (BSEA), on March 17, 1998, granted the School's request. The School made a second request for an extension of time on April 9, 1998. The BSEA granted a second extension of time by order dated April 13, 1998. The School filed its Petition for Review on April 30, 1998.

Thereafter, on May 4, 1998, the Student requested an extension of time in order to prepare and file the Student's Response. The BSEA granted the request by order dated May 4, 1998. The BSEA, due to the multiple extensions of time requested by the parties, established that a written

decision would be issued by June 30, 1998. The Student filed her Response on May 26, 1998.

Prior to the Student's Response, the BSEA elected to entertain oral argument in this matter. After consultation with the representatives of the parties, a mutually agreed-upon date, time, and place were established for oral argument and review. By "Notice of Oral Argument" dated May 7, 1998, the parties were officially notified that oral arguments would be entertained on June 16, 1998, beginning at 10:00 a.m., in Room 225, State House, Conference Room, within the offices of the Indiana Department of Education.

The School's Petition for Review

The School alleged that the IHO committed several procedural errors in the conduct of the hearing that were contrary to law and established procedures for due process hearings. In addition, or as a result of these procedural errors, the IHO's decision was arbitrary and capricious; constituted an abuse of discretion; and exceeded his jurisdiction. The initial alleged procedural error occurred when the IHO would not exclude the Student's exhibits for failure to provide her documents at least five (5) business days prior to the hearing, as required by 511 IAC 7-15-5(j)(3). This placed the School at a disadvantage, particularly because, under Indiana law, the School has to present its case first notwithstanding who requested the hearing. 511 IAC 7-15-5(p). Because the Student was represented by counsel, the IHO should have employed a strict application of the so-called "Five-Day Rule."

The School also alleges that the IHO acted inappropriately when he questioned a proposed stipulation that the 7th grade IEP developed for the Student was appropriate. His raising a "red flag," as the School called it, resulted in the failure of the School to obtain this concession.⁷

It appears the School admits it did not provide the parents notice regarding the parents' responsibility to notify the school of their intent to enroll the Student in a private school (footnote 9), but seem to argue that the School should not be expected to have done so, given the recent enactment of the reauthorized IDEA and the fact the School has not yet altered its standard notice to parents of their rights under State and Federal special education laws.

The School disagrees with the IHO's conclusion that the School failed to implement the Student's IEP during her sixth grade year (Conclusion of Law No. 1). The IHO's Conclusion of Law No. 1 reads as follows:

1. The school denied a free appropriate public education (FAPE) to the

⁷The School also seems to raise a concern that the IHO considered issues more appropriately addressed through the complaint investigation process at 511 IAC 7-15-4 and 34 CFR §§300.660-300.662. This argument has no merit. Where an IHO has jurisdiction, as he did here, he has the authority to determine so-called "complainable" issues related to the Student. *OSEP Memorandum 94-16*, 21 IDELR 85 (OSEP 1994).

student in violation of 511 IAC 7-15-5 by failing to implement her IEP (1996-1997, sixth grade) as written by the following acts or omissions:

- A. Consistently giving the student too much homework;
- B. Failure to give the student enough time to complete work;
- C. Failure to provide written progress report at three weeks;
- D. Failure to make sure the student was provided with teacher or peer notes;
- E. Failure to allow the parents direct interaction with general education teachers to monitor progress (i.e., maintaining daily assignment log, communication regarding homework).

The School maintains the Parents stipulated to the satisfactory implementation of the Student's IEP by her sixth grade mathematics and science teachers. Other testimony indicated the Student was given class time in social studies to complete assignments, and that the Student's poor management of class time or desire to work with her mother on the assignments were the reasons for what appeared to be excessive homework. The Student also had time to work on her homework in language arts class, and that extra time was allotted the Student to complete assignments and take tests. The language arts teacher testified that the Student did have access to teacher notes and received direct assistance in this regard from the special education teacher assisting the Student in language arts. The special education aide testified that she provided copies of notes for the Student in science, mathematics, and social studies. The School also maintains that testimony indicates the School did assist the student in monitoring her assignments log. The School also objects to the IHO's conclusion that the parents were denied direct interaction with School personnel.

The School also objects to the other Conclusions of Law, reproduced below for ease of reference. (Although the School objects to the Conclusions of Law, it also objects to those Findings of Fact upon which the Conclusions of Law were based or appear to be based.)

- 2. The school denied a free appropriate public education (FAPE) to the student in violation of 511 IAC 7-15-5 during the student's sixth grade school year when it failed:
 - A. To evaluate the child for her emotional needs after the principal was repeatedly told of her emotional problems, and (later) teachers observed her "shutting down."
 - B. To allow the parents to directly dialogue and interact with general education teachers pursuant to directives from the principal;
 - C. To provide any training to the general education teacher regarding the student's disability, specifically her learning difference, dysgraphia and dyslexia.
- 3. The school's proposed IEP for the 1997-1998 (7th grade) school year was not appropriate for the student because it failed to:

- A. Address the student's emotional-behavioral needs;
 - B. Alert teachers of the student's emotional needs associated with her condition of dysgraphia and dyslexia that results in low self-esteem, and feelings of anxiety and despair when overwhelmed by schoolwork (i.e., given too much homework, not given enough time to copy from board or finish work, not assisted with organizational needs, etc.);
 - C. Provide for dialogue between the parents and the student's general education teachers in an effort to monitor and assess the student's emotional needs, homework, and organizational skills;
 - D. Contain adequate and appropriate annual goals commensurate with the student's sixth grade academic performance and her test scores. The evidence was clear that the student did (and could in the future) easily surpass the school's stated goal of "maintaining passing grades." The IHO is in no way applying a "maximization of potential" standard in this case, but the IEP goal is so unambitious for this unique individual student that it is inappropriate.
4. The [private] school is an appropriate placement for the student as it is addressing the student's need for specialized instruction, including her emotional needs and interaction with parents.
5. An appropriate remedy for a school's failure to demonstrate it could implement an IEP and/or fail to provide an appropriate education (FAPE) and/or failure to offer an adequate or appropriate IEP is tuition reimbursement and transportation costs associated with the private school the parents have selected for their child.

Much of the School's disagreement with the IHO's written decision centers on the degree of communication between School personnel and the Student's parents. The School recites numerous contacts throughout the school year, although most of these are with the principal, and when teachers were present, the communication was within the context of a formal meeting. The School also objects that the Student's physical ailments were not communicated to the degree represented by the IHO in his written decision, and were not communicated to teachers when opportunities arose, especially during CCC meetings. Teachers did not observe the Student experiencing unusual anxiety or complaining of stomach pains.

The School also asserts the IHO, in concluding the School's proposed IEP for the 1997-1998 school year would not have provided a FAPE to the Student, applied a standard in excess of appropriateness notwithstanding the IHO's representation to the contrary. The School maintains that it complied with the law and that the IEP was reasonably calculated to provide the Student educational benefit.

As to Conclusion of Law No. 4, the School maintains there is insufficient evidence to support a conclusion that the private school is providing the Student with an appropriate education, especially with respect to her emotional-behavioral needs. As a consequence of the above, there is insufficient legal basis, the School asserts, to require it to reimburse the parents for the tuition and costs associated with the private school placement.⁸

The Student's Response

The Student does not deny that she failed to timely provide her exhibits to the School. However, she asserts the School's argument is moot because she substantially complied with 511 IAC 7-15-5(j)(3), the School was not prejudiced by the delay, the School declined a continuance, the School waived any objection by using the Student's exhibits in support of its position, and the School did not renew its objection at the end of the hearing.

The Student disagrees with the School as to the role of an IHO, asserting that an IHO has the right to ask questions and provide comments, especially where a critical issue is involved. The IHO also heard three (3) days of testimony during which time he had the opportunity to assess the demeanor and credibility of witnesses, especially where, as in this case, the testimony of witnesses contradicted one another. There is, the Student asserts, ample documentary evidence and testimony to support the IHO's Findings, Conclusions, and Orders. The procedures he employed were neither arbitrary nor capricious, nor were they inconsistent with established procedure. The Student believes the IHO did not exceed his authority but acted according to his responsibilities.

COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The BSEA convened on June 16, 1998, at 10:00 a.m., to entertain oral argument from the representatives of the parties. All members of the BSEA were present. Both parties appeared by counsel. The BSEA, having thoroughly reviewed the record, the School's Petition for Review, the Student's Response thereto, and after having considered oral argument of the parties, now makes the following Combined Findings of Fact and Conclusions of Law.

1. This matter is properly before the BSEA, pursuant to 511 IAC 7-15-6. The BSEA has jurisdiction to review the written decision of the IHO and to review the procedures employed by the IHO in this matter.

⁸The School, at footnote 119 in its Petition for Review, attempts to give a different interpretation for the TOR's "psycho" notation by explaining that "psycho" refers to a "psychoeducational evaluation" that needed to be handled with "kid gloves," given the parents' past concerns about confidentiality. Unfortunately, the statements of lawyers *ex post facto* are not evidence. The time to have the TOR explain these notations was during the hearing.

2. Although the Student did not comply with the five-day rule for the sharing of documents, as required by 511 IAC 7-15-5(j)(3), the IHO offered accommodations to the School in order to cure any prejudicial effect. The School declined these offers. The School did not demonstrate that it suffered any prejudice as a result of the Student's failure to timely share documents, nor did the IHO commit any procedural error.
3. The IHO did not commit any procedural error by questioning the Student's counsel with respect to a proposed stipulation. This is within the discretion of the IHO. There was no showing of any abuse of this discretion.
4. Although the BSEA questions the use of some value-laden language by the IHO in his Findings of Fact, the BSEA nevertheless has determined that the IHO based his facts upon testimony and other documentation in the record, except as to Finding of Fact No. 48.
5. Finding of Fact No. 48 found that the private school was providing the Student with an appropriate education, and that the Student is progressing academically and socially at the private school. However, the record does not contain sufficient reliable evidence that this is so. As a consequence, Finding of Fact No. 48 is deleted.
6. The BSEA uphold the IHO's Conclusions of Law No. 1 and No. 2 as written, finding that the School denied a FAPE to the Student through its failure to to implement the Student's IEP during her sixth grade year (school year 1996-1997).
7. The BSEA upholds the IHO's Conclusion of Law No. 3 to the extent the proposed IEP for the 1997-1998 school year failed to address the Student's emotional-behavioral needs; failed to alert teachers of the Student's emotional needs associated with her dysgraphia and dyslexia, which may result in low self-esteem, despair and a sense of being overwhelmed; and failed to provide for dialogue between the parents and the general education teachers in an effort to monitor and assess the student's emotional needs, homework, and skills. However, the BSEA struck from Conclusion of Law No. 3 the following statement by the IHO, finding that the record lack sufficient evidentiary basis to support it: "[The proposed IEP failed to] contain adequate and appropriate annual goals commensurate with the student's sixth grade academic performance and her test scores. The evidence was clear that the student did (and could in the future) easily surpass the school's stated goal of 'maintaining passing grades.' The IHO is in no way applying a 'maximization of potential' standard in this case, but the IEP goal is so unambitious for this unique individual student that it is inappropriate."
8. The BSEA strikes the IHO's Conclusion of Law for lack of evidentiary basis. The IHO's Conclusion of Law is related to Finding of Fact No. 48, which was also deleted for the same reason. There is no reliable showing that the private school is an appropriate placement for the Student.

9. The BSEA amends the IHO's Conclusion of Law No. 5 to read as follows:
5. Although the School agreed to the modifications in the IEP for the 1997-1998 school year, its history of failure to implement this Student's previous IEPs created an impediment to providing a FAPE to the Student. An appropriate remedy for a School's failure to demonstrate it could implement an IEP or fail to provide an appropriate education or failure to offer an adequate or appropriate IEP is tuition reimbursement and transportation costs associated with the private school the parents have selected for the Student.
10. The BSEA upholds the orders of the IHO, requiring the School to reimburse the Student's parents the \$4,200 in tuition costs for the private school placement during the 1997-1998 school year, and to reimburse the parents the costs of transporting the Student to the private school. Reimbursement for transportation shall be determined based upon 511 IAC 7-6-6(g) in that the parents shall be reimbursed at no less than the *per mile* rate at which employees of the School are reimbursed.
11. All other matters not specifically addressed by the BSEA are hereby overruled.

Date: 6/17/98 _____

/s/ Richard Therrien _____

Richard L. Therrien, Chair
Indiana Board of Special Education Appeals

APPEAL RIGHT

Any party aggrieved by the decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5.